U.S. TREASURY DEPARTMENT
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PUBLIC HEALTH SERVICE
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COURT DECISIONS ON PUBLIC HEALTH

REVIEW OF DECISIONS PUBLISHED IN THE PUBLIC HEALTH REPORTS DURING 1930–1932

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REVIEW OF COURT DECISIONS RELATING TO PUBLIC HEALTH WHICH WERE PUBLISHED IN PUBLIC HEALTH REPORTS DURING 3-YEAR PERIOD 1930–32[1]

Abattoirs.—In Massachusetts it was held (86) that a city board of health could prohibit the maintenance, on certain specified premises, of a place for the keeping and slaughter of fowl, even though the person seeking to conduct a slaughterhouse on such premises had held a license so to do for over 20 years and had, at the time of prohibition by the board, started construction on a new modern building according to plans and specifications which the board had approved. A New York decision (1) held valid a city ordinance which made it unlawful, without permission from the common council, to slaughter animals within certain described territory. A Texas case (94) presented the question of the validity of a city ordinance prohibiting the use in the city of establishments for the slaughtering of animals and poultry, the ordinance being challenged by a company that was operating a poultry slaughterhouse when the ordinance was enacted. The city had statutory authority for its action, and the court held that the ordinance was valid upon its face and could be stricken down only by a clear showing that the council had exceeded its discretion under expressly granted powers and had acted arbitrarily and without reason.

Animals.—A Colorado case (83) held a city not liable for alleged damage to dairy cattle which were driven off land owned by the city as a watershed. An ordinance of a Missouri city, prohibiting the keeping of swine in the city between certain dates, was held void (54), as the keeping of hogs was not a nuisance per se and the city was not empowered by statute or charter to prohibit the keeping of animals when such keeping was not a nuisance per se. An Oklahoma law, providing for the inspection in counties of more than 65,000 population of livestock intended for slaughter, was held valid and not discriminatory (113), even though it differed in some respects from another inspection law applicable to less populous counties.

The remaining cases dealt with bovine tuberculosis. In a Federal prosecution (115) based upon resistance to the demand of a Federal inspector that the defendants permit the tuberculin testing of their cattle, such testing being provided for by the law of the particular State, it was concluded that the testing of cattle not shown to have entered or to be about to enter interstate commerce lay exclusively within the State's police power, and that the rendition of a service by a Federal officer solely in aid of the administration of a State law authorizing compulsory tests was not the performance of a Federal duty. A California case (72) held that statutory pro-

[1] The numbers in parentheses in the text refer to the correspondingly numbered cases listed in the table following the text.
Prior publications containing court decisions previously published in the PUBLIC HEALTH REPORTS are Reprints Nos. 342 and 410 and Supplements Nos. 56 and 84.

visions as to compensation for destroyed tuberculous cattle did not violate a constitutional provision that the legislature should not "make any gift or authorize the making of any gift of any public money or thing of value to any individual." In Iowa (60), Minnesota (105), Nebraska (107, 106), and Washington (43), laws relating to the tuberculin testing of and the eradication of tuberculosis in cattle were upheld.

Barbering.—An ordinance of a Mississippi city, prohibiting barber shops from being open before or after certain hours, was held not to be sustainable on the ground that it was designed to fix a reasonable time within which a sanitary inspection of the shops could be made (55). A North Carolina law regulating the practice of barbering was held constitutional (100) when the court decided against the contentions of one who had performed the work of a barber without obtaining the registration certificate required by the statute.

Bedding.—In Indiana (114) a law providing that shoddy should not be used in making, etc., any mattress and prohibiting the sale of any mattress in which shoddy was used was upheld against attack on constitutional grounds but was restricted in scope by the court's construing the pertinent provisions to prohibit the use of the materials mentioned when shown to be insanitary or when, by allegations of fact, it appeared that they would endanger health. A Massachusetts decision (20) held that, under a bedding law of that State, mattresses filled with material containing "garnetted clippings" were required to be labeled as containing "second-hand" filling.

Communicable diseases.—An action by an administratrix was held to lie against a city in Maine to recover for damages alleged to have been sustained because of the premature removal from the municipal isolation hospital of a scarlet fever pay patient who later died (4). It was held that the city could not escape liability on the theory that it was exercising a governmental function. A Michigan case (77) involved a law making it the duty of a physician who should assist and be in charge at a birth or have care of an infant after birth to give treatment against ophthalmia neonatorum as soon as practicable after birth and always within 1 hour. By an equally divided supreme court it was held that a physician could not be convicted thereunder where, although unable to be present at a birth, he came 8 hours later but did not treat the child's eyes. In Missouri damages were allowed for the contraction of tuberculosis by a person who had been employed in sand blasting (28), the action being based upon alleged failure of an employer to furnish an adequate respirator as required by statute. It was held that the trial court acted properly in refusing an instruction that "noxious dusts", as used in the statute, meant only such dusts as were inherently harmful by reason of the component elements therein and did not mean dust which may be harmful by reason of the amount thereof or the manner of handling the same. In an action on an insurance policy, it was held (65) that the company could not compel the production of the New York City Health Department's records showing the treatment of the deceased for a communicable disease at the department's clinics, the court saying that the department's rule restricting in-

spection of records was sufficient ground for so holding and that to divulge a patient's secrets would be against public policy.

Drinks.—The sanitary code of the New York City Health Department required the labeling of nonalcoholic carbonated beverages to indicate the presence therein of saccharine or other synthetic sweetening agent, and a conviction for the violation of such provision was affirmed (81). The State Board of Health of Utah was held to be without authority to adopt regulations requiring the dispensing of soft drinks in containers that had been sterilized in a specified manner or in single-service paper containers (98). Three cases in Wisconsin dealt with licenses for the manufacture and sale of soda-water beverages. The first two decisions, one with respect to a wholesaler (29) and the other with respect to a retailer (51), held that, under the statutes as then existing, a municipal license to manufacture and sell soda-water beverages was not required of one who had a State license. The third decision (56), however, in view of the then state of the statutory law, held that a city license, in addition to a State license, could be required.

Drugs.—A California statute made the sale of an adulterated drug unlawful. It also provided that any agent of the State board of health had the right to purchase a suspected drug and refusal to sell was a misdemeanor. A sale of an adulterated article to an agent of the board, who stated that he wished to take a sample officially, was held not to be a violation of the statute (79).

Excreta disposal.—A law in Kentucky requiring "suitable and proper" toilet facilities in places where females were employed was upheld (6), the court refusing to take the view that the law was void for uncertainty because it failed to erect any standard of conduct possible for a person to know and observe.

Food.—By an act of Puerto Rico it was made illegal, among other things, to have or offer for sale coffee which was adulterated or mixed with any other substance, and this law was upheld (39) in a case involving coffee mixed with 4½ percent of sugar. An ordinance of an Arkansas city required that persons or corporations not having an established place of business in the city and bringing bakery products regularly into the city for sale should submit the wagon, automobile, or other vehicle, and the bakery products transported therein, for inspection at least once a week, a charge of $2 being made for each certificate of inspection. This ordinance was declared void (84). In California a county ordinance which required a license, the fee for which was $200 a year, in connection with the manufacture, sale, etc., of oleomargarine or other butter substitute, was held invalid (33). An Illinois decision (17) was to the effect that the city of Chicago could, under the powers granted by statute, require the licensing of wholesale food establishments. Another Illinois case (76) held void, because arbitrary and unreasonable, a law prohibiting the manufacture, sale, etc., of so-called "filled" milk. A Minnesota statute, which amended a former law and which related to the sanitary wrapping of bread, was held to violate the constitutional requirement that no law should embrace more than one subject, which should be expressed in its title (30).

Garbage.—In an original suit brought in the United States Supreme Court by the State of New Jersey, that State was held entitled

to an injunction restraining the city of New York from dumping garbage into the ocean (69). The State complained that great quantities of the garbage moving on or near the water's surface frequently were cast upon the beaches belonging to it, its municipalities, and its citizens, thereby creating a public nuisance and causing great and irreparable injury. The court said that a reasonable time would be accorded the city within which to carry into effect plans for otherwise disposing of garbage. An Indiana statute defined garbage as "kitchen refuse from cooking food" and provided that only the department of sanitation could lawfully haul away such garbage in a sanitary district. In an injunction proceeding by a sanitary district, it was held that food materials left from the tables and from the preparation of food for the tables in hotels and restaurants were not garbage within the terms of the statute (52). A law of Maryland, prohibiting a garbage reduction plant within a certain area, was held not to prohibit a garbage incineration plant (110). In a Michigan case (2) the maintenance of piggeries, at which over 80 percent of a city's garbage was fed to several hundred hogs, was restrained at the suit of residents in the vicinity. Where an exclusive franchise for a limited period to collect and haul the garbage in an Oregon city had been conferred by ordinances and contract, such franchise could not be impaired later by an amendment to the city charter prohibiting the granting of such a monopoly (32). The court said, however, that it found no occasion for denying legal significance to the charter amendment at the conclusion of the franchise involved. A Texas municipality deposited "wet" garbage and scrap iron, tin cans, and other similar trash in trenches. As one trench was dug it was filled with garbage; then another trench would be dug by its side and the dirt deposited over the first trench. Such action by the city was enjoined under a law providing that no municipal corporation should maintain any dumping ground or dump any trash, refuse, debris, or dead animals, or permit the same to remain within 300 yards of any public highway (58).

Health authorities.—Where the term of a health officer of a Maine city had expired but two successive appointees to the office did not qualify, such officer, not having been removed, was held to hold the legal title to the office and entitled to the salary, in view of a city charter provision that a subordinate officer should hold office for his term and until another was elected and qualified in his stead, unless sooner removed by the city council (63). The powers of the New York City Board of Health under certain sections of the city charter and sanitary code were declared not subordinated to zoning resolutions so as to forbid the board's adopting a certain regulation (78). The court said that the establishment of zones did not mean that any part of an unrestricted district could be used for a poultry slaughterhouse and that it was not an unreasonable regulation to fix a suitable area of unrestricted property for the location of a site for such a business. An Ohio case (12) presented the question as to whether or not the State civil service laws, as then enacted, applied to persons employed by the board of health of a city health district. The conclusions reached were that the board's employees were not city employees, that they did not hold under the civil service laws, and that the board could remove them. In an Oklahoma decision (10),

one who had been regularly appointed as a county superintendent of public health, deriving his appointment from the State health officer, brought action to recover for his services. No appropriation for his salary or expenses had been made by the county excise board. The court's view was that, under the applicable statute, the superintendent was one of those officers whose compensation and the extent thereof were wholly dependent upon the action of the excise board in providing revenue from which they could derive compensation. A legally qualified osteopathic physician was held to be "a legally qualified physician" within the meaning of a Washington statute providing for the appointment of a legally qualified physician as city health officer (108).

Hospitals.—After considering certain statutory provisions contained in the public health law and town law, it was held in a New York case (53) that a town had no right to exclude tuberculosis hospitals therefrom or to limit the places therein where such hospitals could be established. In Oklahoma it was decided that the State constitution placed the burden of maintaining State tuberculosis hospitals upon the State and that the legislature was without authority to make counties liable for any portion of the maintenance expense (89).

Ice.—An ordinance of a Texas city, prohibiting the sale in the city of ice manufactured outside of the city unless made with distilled water, was held void (31).[1]

Milk.—A Federal district court denied to a citizen of Georgia an injunction restraining the enforcement of a Florida law regulating the sale of milk and cream (70). The plaintiff sought to have certain provisions of the act declared unconstitutional. In Arkansas there was affirmed a conviction of a dairyman for the violation of rules of a district board of health in that he had sold milk within a certain city without having paid the fees prescribed by the rules (8). A Connecticut city ordinance made unlawful the retail sale of milk or cream unless produced from tuberculin-tested cattle or pasteurized. The court said that the State statutes recognized and made lawful at least five kinds of milk, specifying them, and held that the ordinance, as it conflicted with the statutes, was void, saying that the city had no power to prohibit the retail sale of any one of the kinds of milk authorized by statute (92). A milk law of the District of Columbia required, among other things, a permit for the bringing or sending of cream into the District for sale. Certain products bearing trade names were shown to be sterilized cream sold in hermetically sealed cans and were shown to be cream in all respects as that term was defined in the law. The court's view was that the products were within the statute and that a permit was required (59). In a Kentucky case (11) there was involved the applicability of a city milk ordinance to the delivery of milk, pursuant to contract, to the State penitentiary located in the city. In disposing of the case, wherein two persons engaged in carrying out the contract were charged with delivering milk in the city without a permit from the city health

[1] The judgment in this case was reversed and the ordinance held valid by the Texas Commission of Appeals on May 3, 1933. 59 S.W. (2d) 822. On Oct. 23, 1933, the United States Supreme Court denied a petition for a writ of certiorari, the effect of this being to sustain the decision of the commission of appeals. 54 S.Ct. 103.

officer, it was held that the milk ordinance had no application to the delivery of milk to the penitentiary.

One section of the Massachusetts statutes, among other things, prohibited the possession, with intent to sell, of milk from which a portion of the cream had been removed, while another section required that a milk producer should be given notice and an opportunity to bring milk up to standard before being liable to prosecution for producing milk below standard. In a case (21) where there was a conviction under the first section for possessing, with intent to sell as pure milk, milk from which a portion of the cream had been removed, the court was of the opinion that the two sections referred to distinct offenses, a difference being recognized between milk naturally deficient and milk made deficient by dilution, and rejected the defendant's contention that he could not properly be convicted because he had not received the notice mentioned in the latter section. In a New Hampshire case (116) construing a law for the licensing by local authorities of milk dealers, it was held that the issue of licenses was mandatory when the specified conditions had been met. If an examination of an applicant's plant was necessary in carrying out the statute, it was stated that some limitation of the area in which it was to be had must have been contemplated, but that what were the reasonable limits was a question for the local authorities subject to judicial revision if not fixed by the exercise of a reasonable discretion. A local rule, forbidding the granting to nonresidents of a city of licenses to sell milk therein but not affecting nonresidents licensed at the date of the rule's passage, was declared invalid. In a mandamus proceeding brought to require the New York City health authorities to rescind the revocation of and to reinstate a milk business permit, certain defenses interposed by the health authorities were held sufficient in law (49). A conviction under an ordinance of an Oklahoma city for selling milk without a license was sustained, the court saying that, the defendant having made no showing that the license fee was unreasonable, the presumption was that the fee was reasonable and necessary (41). An ordinance of another Oklahoma city imposed annual license fees of from $10 to $30 on inspected dairies, which were those dairies that sold raw milk to consumers, and a fee of $1 on farm dairies, which were those dairies which did not sell raw milk to consumers but delivered it to pasteurizing plants. It was held that the ordinance was not invalid because of the difference in the fees charged inspected dairies and those charged farm dairies and pasteurizing plants (109). In a Rhode Island case (35) the supreme court declared itself unwilling to decide a question as to the constitutionality of a pasteurization plant statute on a record wherein it was admitted as a matter of pleading that the provisions complained of were unreasonably discriminatory.

Municipalities, liability of.—In an action brought by cemetery owners, a California city was held not liable for damages caused by an ordinance forbidding burials in any cemetery within the city (44). In a Florida case (16) the court held that a municipality may be held liable for damages occasioned by the negligent operation of its incinerator, whether it be alleged or not that the manner of operation constituted a public nuisance.

Narcotic drugs.—The Harrison antinarcotic law, among other things, made unlawful the sale of narcotics except (a) in or from the original stamped package and (b) in pursuance of the buyer's written order on an official form. In a case (9) involving violation of the above provisions the United States Supreme Court held that each of several successive sales constituted a distinct offense, however closely they followed each other; that, where one sale violated both of the above requirements, two offenses were committed; and that the penalty section was to be construed not as imposing a single punishment for a violation of the distinct requirements above mentioned when accomplished by one and the same sale but as subjecting each offense to the penalty prescribed. There was a conviction under a California law for possessing a narcotic drug and for forging a prescription by which the drug was obtained. The court said that a prescription for a narcotic drug was the subject of forgery, that the intent to defraud was manifested by obtaining the drug by means of the false writing, and that the portion of the law making it unlawful to forge or alter a prescription was not unconstitutional because not embraced by the act's title (75). That portion of the California narcotic law which purported to authorize a forfeiture without notice to the owner of any vehicle used to transport narcotic drugs not lawfully possessed or transported was held invalid as being a denial of due process (74). In still another California case (73), it was contended that certain words in the narcotic law describing certain drugs were not in the English language and that the section was, therefore, violative of the State constitutional requirement that laws be published in the English language, but the court held this contention untenable. A Louisiana statute, among other things, prohibited the possession in any form of the plant known as "marajuana", and it was held that one who had upon his premises to his knowledge a growing crop of marajuana possessed the plant within the meaning of the law (96). Certain grounds urged against the validity of the statute were rejected by the court. A Montana decision on narcotics (101) held that section 3186, Revised Codes 1921, as amended in 1929, superseded section 3189. However, another Montana decision (97), handed down a little later, took the view that a 1911 act (sections 3186–3188) was entirely superseded and repealed by a 1921 act (sections 3189–3202), and that 1927 and 1929 laws amending section 3186 were void, as section 3186 had been impliedly repealed in 1921. Claims that the information was faulty in not negativing an exception stated in the statute and in not containing a statement as to the age of the purchaser of the narcotic were rejected. In a prosecution under a Washington statute which made it unlawful to possess narcotic drugs unless such drugs had been lawfully obtained and which put the burden upon the defendant to show that he came within any exception contained in the statute, it was held that, while the State had to prove that the defendant possessed the drug, if he desired to rest his defense upon his lawfully obtaining possession, he had the burden of proving such lawful acquisition to the extent of creating in the minds of the jury a reasonable doubt as to whether or not he had unlawfully acquired possession (99).

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Nuisances.—An order of a local board of health in Massachusetts, made under statutory authority and prohibiting the exercise of the trade or employment of keeping swine on certain premises, was upheld (88). By a Michigan decision (42) a village and a creamery company were enjoined from depositing sewage and waste in a drain so as to cause offensive odors or vapors in front of plaintiffs' home. In 5 Pennsylvania cases (25, 62, 23, 24, 26) certain piggeries were held to be subject to abatement as public nuisances.

Plumbing.—Sections 3 and 4 of a Kentucky law on the examination and registration of plumbers (Laws 1930, ch. 167) were declared void because the subject matter thereof was not covered by, and was wholly foreign to, the title of the act (104).

Schools.—Construing a Missouri statutory provision that no school teacher should be employed who had not furnished a physician's certificate showing the teacher "to be in good health and free from any contagious disease at the time the certificate is granted", the court said that it was obvious that it was the legislative intent that the time of furnishing the certificate should be referable to the actual period of employment and not to the date of execution of the employment contract and that the evident purpose of the statute was that the teacher should be in good health during the term of actual employment or at least at the beginning of the term of actual employment (111).

Sewage disposal.—In an action against a Georgia city for damages caused by the city's emptying sewage into a stream flowing through plaintiff's land, it was said that a landowner could recover damages for the impaired rental value of his land, the measure being the difference between the rental value before and after the nuisance, and also for damage to him while living on the land resulting from the contaminated atmosphere and offensive odors (7). In 3 Kentucky cases (45, 46, 47) several home owners sought damages against a city because of a nuisance created by the city's sewage disposal plant, the claim being that the atmosphere became polluted with foul odors to such an extent as to render plaintiffs' premises almost uninhabitable at times. The evidence was to the effect that the plant was of the latest type and that the odors would disappear when a correct knowledge of how to operate the plant was acquired. Because the injury was due to the improper use of the plant, it was held that the measure of damages should not have been on the theory that the cause of the injury was permanent but that the damages should have been confined to decreased rental value and impairment of use and occupation by the owners who occupied their premises.

In a suit to enjoin a Maryland city from discharging untreated sewage into adjacent tidal waters, the court said that, as there was no evidence of any negligence or misconduct, the acts complained of did not constitute a nuisance if done under authority of the State, and then reached the conclusion that such acts had been done under State authority (18). An injunction was refused. An Oklahoma city was held liable in an action for damages brought by a riparian owner because of the discharge of unpurified sewage into a stream (71). It was held that such a nuisance was a temporary one within the rule that a nuisance which can be abated by the expenditure of money or labor is temporary, and that the municipality could not

elect to continue the nuisance and require it to be held permanent. In a case (13) sustaining an order of the Rhode Island Board of Purification of Waters to a town to take certain measures for the prevention of the pollution by sewage of the town's harbor, it was held that a 1920 law creating the board revoked the authority given to the town by a 1901 law "to convey sewerage into tidewater" and that such authority was not revived by a 1929 amendment to the 1901 law. In a Texas case (117) wherein there was denied an injunction to restrain the operation of a municipal sewage disposal plant at the place where it was located, the court held that, under the pertinent statutes, a discretion was vested in the city authorities as to the location of the plant, whether the land was acquired by condemnation or by purchase, and that the courts were not authorized to interfere with the exercise of the discretion in the absence of pleading and proof that the city officials' action in selecting the particular location was not the exercise of a fair discretion but was the result of an arbitrary or capricious choice. A suit was brought by the State of Virginia, at the relation of the attorney general acting under the authority and direction of the governor, to restrain the city of Newport News from discharging untreated sewage into tidal waters, it being contended that the sewage polluted the waters and in effect destroyed the right of fishery therein. In holding that the city had the right to discharge untreated sewage into tidal waters, the court concluded that the legislature had the power to authorize, permit, or suffer sewage to be discharged into Hampton Roads and its estuaries and to subject the discharge to no restrictions relative to its injury to fishery or to such restrictions as it deemed proper, that it had authorized and permitted the city to discharge untreated sewage, and that to what extent the waters could be used for sewage disposal and to what extent they should be devoted to fishery and the restrictions to be placed on these uses were questions committed to the legislature's discretion free from the interference of either the executive or judicial department (22).

Sewers.—In a Washington case (15) an action was brought against a city for damage resulting from sewage being forced back into the basement of plaintiffs' property. The connection of the property with the sewer was required by, and conformed to, a city ordinance and was approved. The forcing back of the sewage was caused either by some obstruction in, or the over-taxing of, the sewer. The court's holding was that there was liability on the city's part.

Sexual sterilization.—A sterilization law of Idaho was upheld as not being violative of the constitutional provisions concerning (a) life, liberty, and happiness, (b) cruel and unusual punishment, (c) due process of law, (d) safeguards in a criminal prosecution, (e) segregation of the departments of government, and (f) equal protection of the laws (103). Concerning a Nebraska law the court took the view that it was within the State's police power to provide for the sterilization of feeble-minded persons as a prerequisite to release from a State institution (50, 19). The sterilizing operation, as applied to a feeble-minded person, was held not to violate the constitutional provision prohibiting cruel and unusual punishment, and the contention that the act's subject matter was not clearly expressed in the title was rejected.

Shellfish.—In an action against a Connecticut city for injury to oyster grounds under tidal waters resulting from sewage discharged by the city into such waters, there was a judgment in favor of the city, the court saying that the plaintiff and his predecessors in title took the grounds subject to such rights as existed to discharge sewage into the waters and to the risk of the pollution of the waters naturally resulting therefrom (61). The plaintiff's further claim of an unconstitutional taking of his property without compensation was also rejected.

Vaccination.—Rules of the Arkansas Board of Health, making vaccination against smallpox a prerequisite to school attendance and defining vaccination as "the introduction by scarification of the bovine vaccine virus through the skin", were upheld, even though smallpox was not present in the particular community involved nor its appearance reasonably apprehended, the court sustaining a local school board's refusal to admit to school certain children presenting the certificate of a homeopathic physician as to their vaccination by him by the homeopathic method (3). In construing a New Hampshire statute requiring a local board of health to issue a certificate of unfitness for vaccination "on the advice of a registered physician of the State and practicing in the town in which the child resides", the view that, because a physician's office and residence were in a certain town, such physician was not practicing elsewhere was held to be too narrow (27). The test that a physician was practicing in all towns within the ordinary area of his professional activity regardless of the number of his patients in a particular town at the time his advice was given was said to seem best expressive of the legislative purpose.

Venereal diseases.—An ordinance of a Missouri city provided in part for the physical examination of certain arrested persons and for their quarantine and detention if the examination revealed that they were suffering from a venereal disease in an infectious stage. These provisions were upheld in a case involving the quarantine and detention of a venereally infected person (34). In a New Jersey case (38) a wife was granted a divorce on the ground of extreme cruelty where her husband had communicated syphilis to her. The evidence reasonably showed that the husband knew he was infected before marriage and that he had reason to know he was infected during the period of cohabitation with his wife. In Oklahoma there was a conviction, for exposing a female to gonorrhea, under a statute which, among other things, provided that any person who, after becoming infected and before being discharged and pronounced cured by a physician in writing, exposed another to venereal disease by sexual intercourse should be guilty of a felony (87).

Vital statistics.—In an Alabama case (91) it was held that a local registrar was a public officer, that a death certificate entered on the record book of such registrar was a public writing, and that a citizen was entitled to a certified copy thereof from the local registrar upon the payment of the legal fee therefor. After considering certain State constitutional provisions and the provisions of the State vital statistics registration law, a Colorado decision (82) held that the liability to pay the compensation of the local registrar for the Denver registration district was imposed upon the city and county

of Denver. In a case in the District of Columbia (57) in which the probate of a will was contested, the view was taken that the effect of certain acts of Congress was to make death certificates public records and that, being public records, such certificates could be offered in evidence to prove prima facie the time, place, and cause of death. In an Illinois case (80) the following construction was placed upon those provisions of the vital statistics law which were involved: The local registrar is an agent to receive the original birth and death certificates, to file them with the State health authorities, and to file a copy with the county clerk, who keeps a record for the entire county; local registrars or cities are not required to make and retain any permanent record, although a city is permitted to do so at its option and expense; the first copy of a record made by the local registrar is required to be turned over to the county clerk; and the local registrar is required to issue certified copies to applicants so long as he has the records—that is, in any event during a current calendar month—and also at any time if the city has made extra copies as its permanent record. A Kentucky law provided that a copy of a birth, sickness, or death record, when properly certified by the State registrar, should be prima facie evidence of the facts therein stated. In a case in which the trial court had refused to allow a properly authenticated copy of a death certificate to be read to the jury, the appellate court held the statute valid (64). A local registrar in Louisiana, who was, while so serving, also a salaried employee of a city in his registration district, was held not to be entitled to compensation from the city for his services in reporting births and deaths occurring in the city, where for 9 years he had apparently acceded to the city's demand that he do the work of the registrar for the city in connection with his other duties and where he testified that he knew that, if he pushed the claims, he would be discharged (36).

Water supplies.—In a Connecticut case (48) the plaintiff corporation owned land upon which was a small pond. Water therefrom flowed through a brook to a borough reservoir and pumping station. About 150 feet of the land all around the pond was set apart by the plaintiff for use by the public, and the land back of this strip was divided into lots for sale. Large numbers of people were invited to bathe in the pond and the bathing privilege was offered to lot purchasers. A State law imposed a penalty for bathing in any pond tributary to a reservoir from which a borough's inhabitants were supplied with water. In an action for an injunction and damages, the conclusions of the trial court, the judgment of which was held correct on appeal, were that the pond at the pumping station was a reservoir within the statute, that the plaintiff's riparian ownership conferred only a personal and family privilege of bathing in the pond, that the proposed according of the privilege to the public and lot owners was an unreasonable use, and that none of the lot owners was a riparian proprietor having, as such, bathing rights. An action was brought against an Ohio city to recover damages because of typhoid fever contracted by plaintiff's daughter as a result of impure water. There was a sewer from which property owners had been ordered to disconnect, and it was claimed that the plugging of the outlet of this sewer, by the city health officer in

conjunction with an employee of the city's service department, caused sewage to back up and filter through intervening soil into a nearby water supply line. The court said that, while still adhering to the proposition that the construction and institution of a sewer system was a governmental function, it believed that the city was liable for any obstruction thereto which was known to the city, if the city through its proper officers knew, or in the exercise of ordinary care should have known, that the obstruction would have an injurious effect upon life or property. Another point determined was that the city was not a guarantor of the wholesomeness of its water supply (90). In an injunction action brought by a Utah city with a view to preventing the pollution of waters used by the city for domestic purposes, certain statutory provisions and an ordinance of the city, aimed at the prevention of stream pollution, were said by the court not to be unreasonable regulations when properly and reasonably applied and enforced. But the judgment in the city's favor was reversed insofar as the decree, without compensation, restrained the defendants from grazing their lands, which were not capable of being used for any other purpose, within 300 feet on either side of the stream under all circumstances, even though in so doing they did not make any unreasonable use of their lands and used all reasonable care to prevent pollution of the waters (14).

Workmen's compensation acts.—In a Connecticut case (37) under the workmen's compensation act, pneumonia, causing the death of an employee of the State highway department, was held not compensable. Compensation for infection following vaccination against smallpox was denied in a Connecticut case (95) but was granted in cases in Michigan (68) and Texas (112). In the Connecticut case vaccination was entirely optional with the employee, but in the other two cases this was not so. A Georgia decision (93) denied compensation for silicosis resulting in tuberculosis, it being held that there had been no injury by accident. Two decisions, one in Georgia (66) and another in Kentucky (40), held tularaemia compensable. An Idaho decision (85) granted compensation where a swamper for a lumber company died from Rocky Mountain spotted fever caused by tick bites. Compensation was allowed in an Illinois case (5) for the death from epidemic meningitis of a hospital interne who had been engaged in treating patients suffering from the said disease. In an Indiana case (102) there was an award of compensation where an employee of the State highway commission became ill with gastroenteritis, as a result of drinking some polluted water furnished to him while at work, and later pericarditis developed and death ensued. A Tennessee case (67) presented the question of the compensability of a disease which had developed gradually, and the court took the view that such disease was not compensable.

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Abbreviations: A., Atlantic Reporter; F. (2d), Federal Reporter, second series; N.E., North Eastern Reporter; N.W., North Western Reporter; N.Y.S., New York Supplement; P., Pacific Reporter; P. (2d), Pacific Reporter, second series; S.Ct., Supreme Court Reporter; S.E., South Eastern Reporter; S.W. (2d), South Western Reporter, second series; So., Southern Reporter.

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